IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 130 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

LAKHANPAL NATIONAL LTD.

Appearance:

MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 08/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred following question of law for the opinion of this Court relating to Assessment Year 1979-80:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in directing the ITO to allow depreciation of Rs. 14,112/-?"

During the assessment proceedings, the assessee claimed inter-alia depreciation in a sum of Rs. 14,112/on those assets whose total capital cost had been allowed as deduction in earlier years on account of their being treated as assets for research and development that is for scientific research. The assessee's claim was rejected by the ITO, but the Tribunal relying on the decisions of Bombay High Court in CIT Vs. Mice Products P.Ltd. (1991) 187 ITR 157 and CIT Vs. S.H. Kelker & Co. Pvt.Ltd. (1991) 191 ITR 612, directed the ITO to allow depreciation of Rs. 14,112/- as the capital expenditure incurred on assets of research and development.

We have heard the learned Counsel for the Revenue. Though served, none appears on behalf of the respondent. A Division Bench of this High Court in Synbiotics Ltd. Vs. CIT, reported in (1993) 203 ITR 163 has held that where a capital asset used for scientific research related to the business of the asseee is also ipso facto an asset used for the purpose of the business, it is impossible to conceive of the Legislature having envisaged a double deduction in respect of the same expenditure, one by way of depreciation under Section 32 of the Income-tax Act, 1961, and the other by way of allowance under Section 35(1)(iv) of a part of the capital expenditure on scientific research, even though the two heads of deduction do not completely overlap and there is some difference between the rationale of the two deductions. While laying down the above referred two propositions of law, the Division Bench has followed decision of the Hon'ble Supreme Court in Shree Sajjan Mills Ltd. Vs. CIT (1985) 156 ITR 585.

In view of the decision of this Court quoted above, we are of the opinion that the Tribunal was not right in law in directing the ITO to allow depreciation of Rs. 14,112/- as the capital expenditure incurred on assets of the research and development. The reference is therefore answered in negative i.e. in favour of the

Revenue and against the assessee. The reference stands disposed of accordingly with no order as to costs.

(J.M.Panchal,J.) (M.S.Shah,J.)

*/Mohandas